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ABSTRACT

Progress in the area of civil rights attained under the Carter administration is described in this speech by the current United States Attorney General. Among the Federal activities mentioned are: (1) legal suits to end employment discrimination on the basis of race, sex, and national origin; (2) withholding of Federal funds from State and local governments that do not comply with Federal legislation; (3) consolidation of the education and housing sections of the Civil Rights Division of the Justice Department; (4) pursuit of school desegregation in the West, Midwest and Northeast, as well as in the South; (5) actions taken on the part of institutionalized persons and persons victimized by official wrongdoing; (6) actions taken under the Voting Rights Act to increase minority elected representation; and (7) litigation initiated to end the denial of free public education to the children of undocumented aliens. Activities undertaken within the Justice Department, including the establishment of regional offices, the appointment of Federal judges, and internal employment policies, are also briefly described. (GC)

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ADDRESS

OF

THE HONORABLE BENJAMIN R. CIVILETTI

ATTORNEY GENERAL OF THE UNITED STATES

BEFORE

HOWARD UNIVERSITY LAW ALUMNI

7:00 P.M.
WEDNESDAY, APRIL 9, 1980
HOWARD UNIVERSITY
BLACKBURN CENTER
WASHINGTON, D.C.

U S DEPARTMENT OF HEALTH, EDUCATION & WELFARE
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CIVIL RIGHTS IN THE '80's:
THE VIEW FROM JUSTICE

Historically, our major minorities came to this country involuntarily and, upon arrival, were granted none of the rights for which the nation was established. Blacks came in chains and were written into the Constitution as fractional persons. Women came enslaved by the common law notion of coverture in which, as Justice Black wrote, "the husband and wife are one, and the one is the husband." Many of our Hispanic Americans became citizens by virtue of a treaty ending a war between Mexico and the United States. Nobody asked if they wanted to be part of the United States, and nobody afforded them the rights we regard as fundamental.

Change has taken place. By virtue of the fourteenth and fifteenth amendments, black former slaves were given the vote and the constitutional right to equal protection of the laws and equal enjoyment of the privileges of citizenship. Fifty years later, women were granted the right to vote, but they have not yet been granted constitutional equality. As we all know, though, a constitutional right alone, important as it is, does not guarantee legal equality. Equality is gained begrudgingly and success is measured in inches.

A second civil rights revolution and giant leaps forward occurred in this country in the early 1960's. In rapid succession, Congress forbade sex discrimination in wage rates through

the Equal Pay Act. Congress enacted the 1964 Civil Rights Act, banning discrimination in public accommodations, public education and in programs receiving federal aid on the basis of race, religion, color and national origin and outlawing discrimination by employers and unions on all those bases as well as on the basis of sex. The Voting Rights Act put muscle in the right of each citizen to vote in states and localities with a history of discrimination in voting. It also, for the first time, encouraged voting by members of minority language groups. Congress enacted fair housing legislation, an act to end discrimination in the extension of credit and a law banning sex discrimination in education, as well as in school athletic programs.

Political progress has taken place as well. There were on July 1 of last year 4,607 black elected public officials compared to 1,185 a decade earlier. There are 191 black mayors in the United States, twelve of them governing some of our major cities, four of these in the old Confederacy, and many of them elected in cities with white majority voting populations. Two of our governors are women, and neither of them inherited her job from a politician husband.

The civil rights movement in the nineteen eighties is likely to reflect two major trends, acceleration of the change from statutory and other paper gains to actual experienced gains, and the extension of protection to previously unprotected groups. Two bills that

we hope will emerge from Congress this year will make a significant beginning of a third civil rights advance. The Fair Housing Amendments Act of 1979 will add enforcement power lacking in present law, permitting the Department of Housing and Urban Development to institute administrative proceedings against persons and companies discriminating on the basis of race, sex or national origin, and to refer special cases to the Attorney General who may sue the violator. It will also extend the right to be free from discrimination in housing to handicapped persons, where discrimination was previously lawful.

The Institutionalized Persons Bill will permit the Attorney General to bring suit to redress deprivations of the constitutional and federal statutory rights of persons confined in state hospitals, prisons, juvenile homes and the like. The measure, passed by both the Senate and the House and awaiting conference and final action, provides help to a class of people that is ordinarily the least able to define their problems, organize to solve them or pay for legal assistance.

I have made enforcement of the civil rights and civil liberties of Americans top priority in the Department of Justice. We are committed to creative approaches to breaking the yoke of racism and sexism while continuing to employ sound legal principles and effective remedies.

Let me skim through some of our activities to enforce federally created rights. We have filed more than half a dozen

broad-based suits in each of the last several years, in efforts to end employment discrimination on the basis of race, sex and national origin by states, counties, cities and small towns, particularly in police and fire departments but often throughout the government. We have not hesitated to withhold federal funds from governments that have refused to comply with the equal opportunity laws, invoking this remedy more than 16 times in recent years and prepared to invoke it far more frequently.

We have filed suits against private employers we have found engaging in widespread discrimination and have secured hiring goals, promotion and transfer rights and back-pay for minorities and women.

Our Civil Rights Division consolidated its housing and education sections into a single unit, designed to attack more effectively the interrelated problems of residential and public school segregation. We have moved the fight to desegregate public schools into the Northeast, the Midwest and the West, without decreasing our efforts to end school segregation in the South. And we have increased our efforts to integrate higher education as well, seeking mergers and other remedies against segregated state college and university systems in Tennessee, North Carolina, Mississippi and Louisiana, among others.

We have, in one year, filed suits involving housing discrimination, based on race, sex, national origin and religion potentially affecting 15,000 units of housing. I have asked that we look more carefully at potential federal suits to attack planning, zoning, and other municipal and state actions that have created the familiar pattern of black urban areas choked by white suburbs.

We have joined in several actions on behalf of institutionalized persons and persons victimized by official wrongdoing. For example, we filed suit on behalf of 24,000 inmates in Texas correctional institutions, seeking to end serious overcrowding and brutality and to provide adequate sanitary and medical services. We are continuing our efforts to represent poor and black persons in Philadelphia who we believe have been abused by the City's police department. In a recent shocking case, we learned that the Chicago Police Department was requiring women they arrested -- even for traffic offenses -- to undergo strip searches and searches of their body cavities, while men were spared such degradation. We took court action to stop the practice and to obtain compensation for its victims.

We have increased the likelihood of minority representation in state, city and county legislatures -- as well as on school boards, in judicial positions and in political party activities in states from Alabama to Alaska through scores of actions under the Voting Rights Act.

We have reviewed some 10,000 complaints each year alleging criminal interference with rights under color of law, and have prosecuted the violators whenever we could frame a valid case. In 1979 alone, the Department of Justice prosecuted 24 members of the Ku Klux Klan.

Our activities are not restricted to citizens alone. We are actively engaged now in litigation in Texas to stop the state and its localities from refusing to provide free public education to the children of undocumented aliens.

As you can see, our efforts touch most aspects of governmental activity and human life in this country. We don't do our work alone. The Justice Department often works jointly with many other federal agencies. And the Civil Rights Division relies on the Federal Bureau of Investigation to help investigate its cases, and on the 94 United States Attorneys around the country to help develop and try cases. At my direction, the Civil Rights Division is now working to establish civil rights units in United States Attorneys' Offices in large, metropolitan areas, in the Southwestern United States and in other areas with a history of civil rights violations. Our goal is to increase the number of people in the Department with expertise in civil rights law enforcement. We will provide citizens with a neutral place in their communities where they can comfortably lodge civil rights complaints.

In a similar vein, I have created the position of Civil Liberties Coordinator within the Department of Justice to keep all of us aware of the implications of our actions on the civil liberties and civil rights of our people.

The Department has additional responsibilities that have had and will have long-term impact on equal justice in the United States. One of my most time-consuming, difficult and significant tasks is to assist the President and the members of the Senate in selecting candidates for federal judgeships. Since the beginning of 1977, we have been able to bring about a substantial change in the complexion of the federal judiciary. Women have increased from one federal circuit court judgeship and four district court positions to seats on all but three of the circuits today and 22 district court judgeships. We have doubled the number of Hispanics on the federal bench and have three more pending confirmation today in the Senate. When the Senate confirms the six black judicial nominees now awaiting action, we will be close to doubling the number of blacks serving as federal judges in just 3 1/2 years.

We have had a positive impact on non-minority judicial candidates as well. In addition to examining their records carefully to evaluate their fairness, particularly with respect to human rights, we do not recommend for appointment to the federal bench judicial candidates who maintain membership in

private clubs that discriminate on the basis of race or sex or otherwise invidiously discriminate.

The Department of Justice itself has not been immune from valid criticism for its employment practices, and I have taken steps to make it a leader by example. When I became Attorney General, in August of 1979, a survey of the top positions in the Department of Justice showed 14 women, 16 Hispanics, 41 blacks, 3 native Americans and one Asian American in those positions. I have made it clear since I took the job that I intend to double those figures before I leave, given some reasonable time. To accomplish that, I have taken a number of specific steps. I have instructed each component of the Department to develop by May 15, goals and timetables for increasing the number of minority, women and handicapped employees in each category of employee within the component.

Senior Executive Service members, the management corps of the federal government under the Civil Service Reform Act, will be evaluated on their success in meeting their component's goals, and continued employment, promotion and raises depend on these evaluations.

In an effort to increase the number of minority and women employees in key managerial, high-level and policy-making positions, I have asked that advance notice be given to the Office of the Attorney General before any such positions can be filled. We will help the components search for minority

and women candidates, instead of relying on the "old boy" network to produce another white male executive.

We have established a Talent Bank, to permit individuals involved in the employment process to locate minority, women, and handicapped present employees and applicants who may be qualified to fill openings in their components. We would welcome your help in filling our Talent Bank with resumes of persons interested in being lawyers, law enforcement officials, computer specialists, budget experts, and even Assistant Attorneys General.

We have established representative committees of employees to review hiring of mid- and high-level employees for affirmative action implications.

The components of the Department are required to establish concrete criteria for work assignments and promotions for attorneys, so that employees have a firm, objective standard against which to gauge their own performance and be measured by their supervisors.

I have required the head of each component to report quarterly to me personally on progress in meeting affirmative action goals.

But as you well know, laws alone, even accompanied by firm administrative actions, do not produce equality of right, opportunity or achievement. We are fighting to overcome a history of discrimination as old as our country itself, and we cannot do that painlessly. We are seeking to change attitudes

that we grew up facing, and that have been ingrained in our legal system as well as in our social structure. I will give you one example of the kind of legacy women are fighting as I think it is particularly instructive.

In the case of Bradwell v. Illinois, one of the first cases learned by women law students, I am told, and among the last taught by male law professors, the United States Supreme Court upheld the ruling of the Illinois Supreme Court that women as such could be excluded from the practice of law. In a concurring opinion, Mr. Justice Bradley declared that

> "The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life. The constitution of the family organization, which is founded in the divine ordinance, as well as in the nature of things, indicates the domestic sphere as that which properly belongs to the domain and functions of womanhood. The harmony, not to say identity, of interests and views which belong or should belong, to the family institution is repugnant to the idea of women adopting a distinct and independent career from that of her husband. . . .

That decision was rendered in 1873, approximately half-way between the Dred Scott decision and Plessy v. Ferguson, but

the ideas it expresses are very much with us today. A Harris Poll conducted at the end of 1979 showed that the most convincing, though false, argument used by opponents of the Equal Rights Amendment is that it goes against the traditional values of family and home, that granting equal rights to women will somehow upset their role in the family. One hesitates to guess at the outcome if the Fourteenth Amendment were being submitted to the states for ratification today.

The problem for all of us is that when one group can dictate the proper role for another group, the freedom and dignity of all of us is subject to the same damaging stereotyping. For as the pre-eminent anthropologist Ashley Montagu has noted, the treatment of blacks in America

> "is exactly parallel with that of women. Up to the first decade of the twentieth century women were the "inferior race" of the masculine world. Everything that has been said about so-called "inferior races" has been said about women. Their brains were small, their intelligence limited, their emotions undisciplined, and they were obsessed by sex."

All of the restrictions placed on women by law paralleled those placed on blacks -- with respect to voting, jury service, ownership of property, access to education and on and on.

We have learned that we cannot change attitudes by changing law. But we can harden attitudes by our action and inaction with respect to legislation. Adoption of the Equal Rights Amendment will not equalize men and women in fact, any more than the Civil War Amendments to the Constitution produced equality of blacks and whites. Adoption of laws barring discrimination against handicapped persons or the aged will not produce the milennium of fair treatment. In the present as in the past, however, the legal provisions will form a framework on which proponents of equality, state and federal legislators and the courts can build a lasting structure. Rejection of equal rights for women or the handicapped or older citizens will have a devastating psychological impact on the victims of discrimination and will signal a return to unreasoned group bigotry that none of us can afford. The disadvantaged are not competing against each other for pieces of the same pie. They -- we -- are all seeking the right to be judged fairly, as individuals, rather than as representatives of racial, ethnic, sex or age groups.

We at Justice are working vigorously to secure and enforce equal rights and equal justice for all. I know you will be a part of that effort.

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